



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CASE NO. 91 OF 2018

JOHN OLUOCH OKETCH (Suing as Administrator ad litem of

the Estate of **LUDIA OKETCH OBUONDE**).....**PLAINTIFF/APPLICANT**

VERSUS

1. SHARIF KAPANGA.....**1ST DEFENDANT/RESPONDENT**

2. FUAD WANJE KOMBE.....**2ND DEFENDANT/RESPONDENT**

3. OMARI IDD.....**3RD DEFENDANT/RESPONDENT**

4. KARISA SAFARI DIMA.....**4TH DEFENDANT/RESPONDENT**

5. KASENA FOLENI.....**5TH DEFENDANT/RESPONDENT**

6. JEY SHINDA BAO.....**6TH DEFENDANT /RESPONDENT**

7. JULIUS KATANA MWARINGA.....**7TH DEFENDANT/RESPONDENT**

8. CHARO KITSAO MWARINGA.....**8TH DEFENDANT/RESPONDENT**

9. KARISA KALAMA.....**9TH DEFENDANT/RESPONDENT**

10. KUPATA NGARE.....**10TH DEFENDANT /RESPONDENT**

11. JUSTUS CHARO.....**11TH DEFENDANT/RESPONDENT**

12. ALBERT KARISA SAFARI.....**12TH DEFENDANT/RESPONDENT**

RULING

1. By this Notice of Motion dated and filed herein on 20th December 2018, John Oluoch Oketch (suing as the administrator of the Estate of Ludia Oketch Obuonde (the Plaintiff/Applicant) urges this Court to be pleased to issue warrants of arrest against the 12 Defendants/Respondents for them to be brought to Court to show cause why they should not be committed to civil jail for disobeying a Court order issued herein on 24th July 2018.

2. The Plaintiff further urges the Court to order the eviction of the said Defendants from Plot No. 59 Malindi which plot is registered in the name of the late Ludia Oketch Obuonde and for the said orders to be enforced by the OCS Malindi Police Station.

3. The application which is supported by an affidavit sworn by the said John Oluoch Oketch is premised on the grounds inter alia:-

i) That the Plaintiff instituted this suit by way of a Complaint and an application dated 20th April 2018 wherein he sought temporary orders of injunction against the Defendants;

ii) That despite the issuance of the said order in open Court, the Defendants have continued to trespass, intermeddle, develop, sub-divide, offer for sale and erect new structures on the suit property;

iii) That the Respondent's said acts are criminal and a clear violation and breach of the orders of this Court and unless the same are punished, the Plaintiff stands the risk of losing his property to third parties and the same amount to an affront on the honour and dignity of this Court.

4. The application is opposed. In a Replying Affidavit sworn and filed on their behalf on 19th February 2019 by the 7th Defendant Julius Katana Mwaringa, the Defendants deny that they have disobeyed the orders of this Court and accuse the Plaintiff of twisting the facts to mislead the Court.

5. The Defendants aver that the Plaintiff has no interest or right over the suit property and assert that they have been continuously occupying the same for a long period of time and have even filed a claim for adverse possession against the real owner one Arbi Ali Mohamed Mussani in ELC Case No. 211 of 2018. They assert that the photographs attached to the Plaintiff's Supporting Affidavit are mere evidence of their existence on the suit property and is not evidence of any contempt of Court on their part.

6. I have perused and considered the application and the response thereto. I have equally perused and considered the Written Submissions filed herein by the Learned Advocates for the parties.

7. It is the Plaintiff's case that vide an application dated 20th April 2018, they sought a temporary order of injunction restraining the Defendants from trespassing, intermeddling, developing, sub-dividing, offering for sale, erecting structures and/or in any manner whatsoever interfering with the Plaintiff's use, occupation and quiet possession of all that piece of land known as Plot No. 59 Malindi.

8. It is further the Plaintiff's case that when this matter came up for hearing in open Court on 24th July 2018, the Court granted the said orders in the presence of the parties and their Advocates. Despite the grant of the same and subsequent formal service thereof upon their Advocates on record, it is the Plaintiff's case that the Defendants have in open breach of the said order continued erecting other structures on, and interfering with the suit property.

9. The Defendants do not contest knowledge of the said orders. They however deny disobeying the same and accuse the Plaintiff of twisting the facts on the ground to mislead the Court.

10. From the material placed before me, it is apparent that the Defendants reside on a portion of the suit property. According to the Defendants, they have been in possession of the suit property over a long period of time to the extent that they now feel the rights of the registered owner of the said property have been extinguished by operation of the law and they have now acquired the same by dint of adverse possession.

11. From the Defendants perspective however, it is not the Plaintiff but another individual by the name Arbi Ali Mohammed Mussani who is the registered proprietor of the suit property. The Defendants herein among others have indeed filed an Originating Summons being Malindi ELC Case No. 211 of 2018 against the said Arbi Ali Mohammed Mussani seeking to be declared the owners of the suit property under the doctrine of adverse possession.

12. In support of their application for contempt before me, the Plaintiff has annexed a number of photographs. There is however not a single paragraph in the Supporting Affidavit clearly explaining what the photographs are about and who is responsible for the structures contained therein.

13. In a situation such as this where the Defendants maintain that they reside in the suit premises together with other persons who are not parties herein, I think it was incumbent upon the Plaintiff to demonstrate not only that the structures shown belong to the Defendants but also that they were erected by the said Defendants and/or their agents or representatives after the impugned orders of this Court were issued and served upon the Defendants.

14. As this Court has stated time and again, contempt proceedings are quasi-criminal in nature. Given that those accused of contempt stand to lose their liberty, orders such as those sought by the Plaintiff herein can only be granted in the clearest circumstances when it can be demonstrated that there was willful and deliberate disobedience of the orders granted by the Court.

15. In the premises herein, I am not satisfied that the application before me has merit. The same is dismissed with costs to the Defendants/Respondents.

Dated, signed and delivered at Malindi this 6th day of February, 2020.

J.O. OLOLA

JUDGE